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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,849	11/27/2001	Michael K. Davis	50031-0020	4891

36178 7590 10/20/2006

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EXAMINER

KNEPPER, DAVID D

ART UNIT PAPER NUMBER

2626

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/996,849

Applicant(s)

DAVIS ET AL.

Examiner

David D. Knepper

Art Unit

2626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

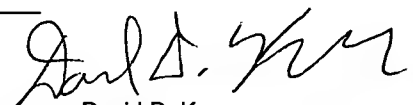
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

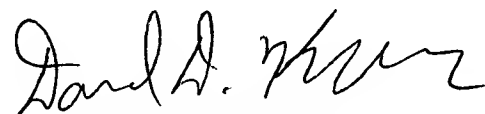
REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.



David D. Knepper
Primary Examiner
Art Unit: 2626

Continuation of 13. Other: No amendments to the claims are presented, therefore the final rejection of 18 Jul 2006 has not been overcome. The arguments contradict the discussion during the Interview of 11 May 2006 where the attorney was told that while removing "the same" language would overcome Cilurzo, it would require a rejection over Tanenbaum whereupon further discussion ensued about how some details of the Application Service Adapter (ASA) might overcome Tanenbaum. The applicant's argument that the Examiner improperly made the rejection FINAL ignores the changes to the claim which required the use of Tanenbaum to address this change. The attorney was clearly told during the interview that Tanenbaum would have been applied if "the same" language had been removed earlier. The attorney led the Examiner to believe that more details would be included in an Amendment to overcome Tanenbaum based on further discussion. For unknown reasons, the attorney seems to recollect the details of the Interview differently. No agreement was ever reached to allow the claims and it is therefore regrettable that the Examiner indicated that a limited level of agreement was reached as this has resulted in a distortion of the record. The Examiner did not want to allow entry of the amendment following the Interview because the arguments presented were not an accurate representation of the discussion during the Interview. However, after discussion with SPE David Hudspeth regarding multiple phone calls by the attorney, it was agreed that the proposed amendment would be entered in an attempt to clarify the record. Upon reviewing the instant specification more thoroughly, it appears that details argued by the attorney during the interview are not present as indicated by the generic description of the ASA on page 36, paragraph 15 as stated in the final rejection of 18 July 2006 and it is suspected that this lack of support in the specification is why no details about what is actually done by the ASA have been added to the claims. The Examiner takes issue with the applicant's statement on page 14 that, "the Examiner has already agreed that claims 8-10, 16 and 17 are allowable over Cilurzo and Tanenbaum". The Examiner would like to give the applicant the benefit of the doubt in case there was a mis-communication during the interview. However, the Examiner must characterize this statement as a blatant falsehood that cannot possibly be believed following the rejection of 18 July 2006 which attempted to clarify the record. As per section 713.04 of the MPEP regarding interviews, "It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability." Although the applicant's statement regarding indicated allowability is false, it is noted that even if the applicant did have such a mistaken belief following the interview, that MPEP 713.04 states: "(Agreements as to allowability are tentative and do not restrict further action by the examiner to the contrary.)" Thus, if the applicant had a mistaken belief that the claims would be allowable as presented, the last office action should suffice to overcome this misconception.



DAVID D. KNEPPER
PRIMARY EXAMINER